

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MELVIN KEITH JONES,

Plaintiff,

v.

BERGELECTRIC, INC. et al.,

Defendants.

No. 2:21-cv-0614-KJM-CKD PS

ORDER

Plaintiff proceeds pro se in this action, which was referred to the undersigned by Local Rule 302(c)(21) pursuant to 28 U.S.C. § 636(b)(1). This case is set for an initial scheduling conference on September 8, 2021. (ECF No. 30.)

Plaintiff filed his complaint on November 30, 2020. (ECF No. 1.) Defendant BergElectric, Inc., (“BergElectric”) filed an answer on December 14, 2020. (ECF No. 4.) On February 19, 2021, plaintiff filed an amended complaint without seeking leave of court. (ECF No. 18.)

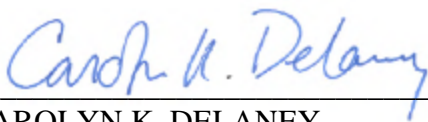
Defendant BergElectric has filed an affidavit opposing the amended complaint. (ECF No. 20.) Defendant Associated Builders and Contractors, Inc., Northern California Chapter Unilateral Apprenticeship Committee (“ABC NORCAL UAC”) states it intends to file a motion to dismiss and is uncertain which complaint plaintiff intends to litigate. (ECF No. 24.) Although defendants had agreed to plaintiff amending his complaint only to correct defendants’ names, neither defendant agreed to the filing of the amended complaint as it was filed.

1 “A party may amend its pleading once as a matter of course within... 21 days after
2 service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f),
3 whichever is earlier.” Fed. R. Civ. P. 15(a)(1). After the 21-day period, “[a] party may amend its
4 pleading only with the opposing party’s written consent or the court’s leave. The court should
5 freely give leave when justice so requires.” Id. at (a)(2); see also Eminence Capital, LLC v.
6 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (holding in a decision whether to grant leave to
7 amend, “it is the consideration of prejudice to the opposing party that carries the greatest
8 weight”).

9 A court may, sua sponte, “strike from a pleading an insufficient defense or any redundant,
10 immaterial, impertinent, or scandalous matter.” Fed. R. of Civ. P. 12(f)(1). Here, plaintiff’s ability
11 to amend his pleading “once as a matter of course” expired, at the latest, 21 days after a defendant
12 answered the complaint. Fed. R. Civ. P. 15(a)(1). At this juncture, plaintiff must obtain
13 defendants’ written consent or leave of court to file an amended complaint. Plaintiff did not
14 obtain either defendant’s written consent to file the version of the amended complaint that was
15 filed and did not obtain leave of court.

16 Because plaintiff failed to adhere to the proper rules for filing an amended complaint, the
17 court strikes the amended complaint filed on February 19, 2021. (ECF No. 18). IT IS SO
18 ORDERED.

19 Dated: April 13, 2021


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE